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Before the
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 OFFICE OF SECRETARY

In the Matter of)	
)	
Geographic Partitioning and Spectrum)	WT Docket No. 96-148
Disaggregation by Commercial Mobile)	
Radio Services Licensees)	
)	
Implementation of Section 257 of the)	GN Docket No. 96-113
Communications Act -)	
Elimination of Market Entry Barriers)	

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COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby submits its comments on the Notice of Proposed Rulemaking^{1/} in the above-captioned proceeding.

AT&T fully supports the Commission's proposal to permit immediate geographic partitioning and spectrum disaggregation by all broadband PCS licensees. Such action would serve the congressional objectives of eliminating barriers to entry by small businesses and providing economic opportunity for a wide variety of entities, including small businesses, businesses owned by women and minorities, and rural telephone companies. It is entirely appropriate for the Commission to adopt these proposed rule amendments at this time because the amendments take into account the rapidly changing legal, regulatory, economic, and technical environment surrounding PCS. AT&T applauds the Commission for its continued forward-looking and flexible regulation of our Nation's spectrum assets.

^{1/} In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, Implementation of Section 257 of the Communications Act - Elimination of Market Entry Barriers, WT Docket No. 96-148, GN Docket No. 96-113, FCC 96-287, Notice of Proposed Rulemaking (released July 15, 1996) ("Notice").

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I. Geographic Partitioning and Spectrum Disaggregation by PCS Licensees Would Serve the Public Interest

The Commission is entirely correct that significant benefits would arise from broadening its partitioning and spectrum disaggregation policies. In particular, the availability of smaller blocks of spectrum or geographic areas in the secondary market should provide an attractive alternative for small businesses that lack the resources to compete meaningfully in spectrum auctions. Permitting disaggregation and partitioning, therefore, would promote the congressional mandates set forth in Section 257 to lower barriers to entry,^{2/} and Section 309(j) to ensure participation in the provision of CMRS services by a broad range of diverse entities.^{3/} Congress's goals would also be advanced through adoption of these proposals because small PCS licensees would obtain another source of financing for construction and technical upgrades.

Partitioning and disaggregation would likewise further the overall objectives of the Telecommunications Act of 1996 by making the wireless telecommunications market more accessible to a larger number of service providers. Where there are now two or three new wireless competitors, spectrum disaggregation could facilitate the entry of several more. AT&T has been approached by a number of entrepreneurs interested in both partitioning and disaggregation of AT&T's broadband PCS licenses. While under the existing rules, AT&T has had to defer these discussions, adoption of the Notice's proposals would reinvigorate them.

^{2/} 47 U.S.C. § 257.

^{3/} 47 U.S.C. § 309(j).

Similarly, adoption of the Notice's proposals would encourage innovation and spectrum efficiency. If a licensee does not require the entire 30 MHz of its A or B block license to accomplish its objectives, the excess may be wasted if disaggregation is not permitted. Disaggregation would also promote the development of innovative technology aimed at expanding possible uses of smaller amounts of spectrum and partitioning would encourage the creation of targeted new service applications. Indeed, by allowing wireless carriers to pursue diverse competitive objectives, spectrum disaggregation and geographic partitioning could further the long-standing goal of Congress and the Commission of enhancing competition to the incumbent local exchange carriers.

It makes abundant sense to let the market dictate the use of spectrum to extent feasible. Auctions are a market-based mechanism for distributing licenses and, unless there are significant and concrete concerns about anticompetitive behavior, an auction winner should be permitted to make choices regarding the amount of spectrum and the size of the geographic area it desires. Likewise, because open auctions assure that a licensee pays full market value, disaggregation and partitioning raise no unjust enrichment issues.

Finally, it is appropriate to revisit these regulations at this time insofar as they were promulgated before the first broadband PCS auction had even commenced.^{4/} The A and B blocks have been licensed for more than a year and the Commission now has sufficient information to conclude that its original fears about spectrum warehousing and slow construction were, for the most part, misplaced. While AT&T agrees with Commissioner

^{4/} Cf. Notice, Separate Statement of Commissioner Susan Ness (raising concerns about the frequency of PCS rule changes).

Ness that consistency is a virtue, it firmly believes that unnecessary regulations should be promptly discarded. This is especially the case when market-based solutions can much more effectively promote the public interest.

II. The Specific Rule Changes to Implement Partitioning and Disaggregation Should Allow Carriers the Maximum Amount of Flexibility

AT&T understands and supports the Commission's desire to keep the administrative burden imposed on the agency to a minimum. Therefore, AT&T supports the proposed requirements that partitioning occur along county lines and that disaggregation be in blocks of at least one MHz of paired frequencies.^{5/} AT&T also agrees that the establishment of a database and a spectrum clearinghouse would benefit both small and large businesses because it would allow them easy access to information on available spectrum and potential buyers and sellers. AT&T looks forward to participation in any industry efforts toward this end.

The Commission's proposals to have the partitioned or disaggregated license terms track the original license and to base both the new and initial licensees' renewal expectancies on "substantial service" will likewise help ensure that the Commission's administrative burden is minimized. In this regard, AT&T supports an exception to the renewal term rule for parties acquiring spectrum in geographic areas in which they already hold broadband PCS licenses.^{6/} In this situation, AT&T agrees that allowing the partitionee to apply its original

^{5/} See Notice at ¶¶ 41-42. While it is unlikely that a licensee would choose to retain only one MHz of spectrum, the Commission should not limit how much spectrum is disaggregated and how much is retained. A "one size fits all" approach might prevent parties from pursuing diverse business opportunities. AT&T agrees, however, that before the last piece of spectrum is disaggregated, the parties would have to seek approval under the assignment of license or transfer of control regulations.

^{6/} Id. at ¶ 57.

license term to the newly acquired spectrum would add significantly to the licensee's efficiency and convenience without adding measurably to the FCC's burden.

Taking potential administrative burden into account, AT&T urges the Commission to implement its rule changes in a manner that gives PCS licensees, as well as prospective partitionees and disaggregatees, the most flexibility possible. As such, the Commission should adopt its proposal to eliminate the requirement that the five-year construction milestone be completed before disaggregation is allowed.^{7/} In addition, AT&T supports the Commission's proposed adoption of a second option by which licensees could meet the construction benchmarks in the context of geographic partitioning.^{8/} This more modest build-out requirement for the partitioned area is responsive to the market pressures faced by PCS licensees.

With regard to the build-out requirements for spectrum disaggregation, however, the Commission should allow parties selling and purchasing disaggregated spectrum to allocate privately the obligation to meet the five-year and ten-year benchmarks. In contrast to partitioning, spectrum disaggregation does not raise the concern that segments of end users might be unserved without separate construction obligations. When there are two or more parties post-disaggregation serving the same MTA or BTA (and thus the same pool of

^{7/} Id. at ¶ 38.

^{8/} Notice at ¶¶ at 33-34.

potential subscribers), there is no apparent reason to require each of them to satisfy the one-third and two-thirds criteria.^{9/}

Therefore, AT&T urges the Commission to allow parties to determine in the course of negotiations how they intend to fulfill the construction requirement in the context of disaggregation. For example, the disaggregator could agree to meet the five-year benchmark on the condition that the disaggregatee assumes responsibility for covering the remaining one-third of the population by the ten-year deadline. In this case, coverage would be provided for at least two-thirds of the market's population by the end of the license term, albeit by different CMRS providers.^{10/} Moreover, the prospective construction obligations of the parties would remain independent of each other because the Commission could enforce its rules against the party that had privately agreed to assume responsibility for meeting a particular benchmark.^{11/}

Allowing this flexibility would serve the public interest because it would ensure that the Commission's coverage requirements were satisfied at the same time that it permits

^{9/} Under the existing construction rules, there is no obligation on the part of a licensee to use any particular amount of spectrum to meet the coverage requirements. Accordingly, with or without disaggregation, a 30 MHz licensee would satisfy the five-year benchmark if it covered one-third of the population in its MTA by providing, for example, a service that used only 10 MHz of spectrum. This rule supports AT&T's view that there is no need to have both the disaggregator and disaggregatee build out their systems to the same extent.

^{10/} AT&T acknowledges that the construction requirement would not be met if the second licensee covered the same one-third of the population that initially was covered by the disaggregator.

^{11/} Under this proposal, the Commission could require the parties to designate in the Form 490 filing which party would be responsible for meeting either (or both) the five-year or ten-year benchmark.

parties to pursue more risky competitive ventures.^{12/} For instance, the initial licensee might want to implement an untried, yet innovative service application on 15 MHz of spectrum, while the disaggregatee intends to provide traditional cellular-type service on the remaining 15 MHz. If the second licensee is allowed to assume the full weight of the construction obligation, it would leave the original provider with considerably more room to experiment. Through the resulting development of new technology and new services, consumers would be the ultimate beneficiaries of such a policy.

^{12/} To the extent the parties do not want to allocate construction responsibilities, they could resort to either of the two options set forth in the Notice. Notice at ¶¶ 52-53.

CONCLUSION

For the foregoing reasons, AT&T supports the Commission's proposal to permit immediate spectrum disaggregation and partitioning. AT&T urges the Commission, however, to allow parties to contract privately regarding satisfaction of the construction requirements in context of spectrum disaggregation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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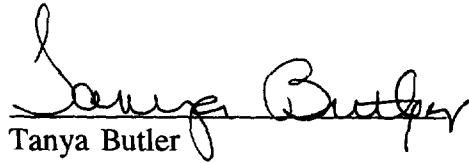
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